

E-Filed 8/19/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

No. CR 11-0488 RS

v.

STIPULATED INTERIM
PROTECTIVE ORDER

HOMY HONG-MING HSU,

Defendant.

WHEREAS an indictment has been returned in the above-captioned criminal case against defendant Homy Hong-Ming Hsu (the "Defendant");

WHEREAS the United States and the Defendant have a duty to provide discovery in this matter;

WHEREAS during the course of such discovery, some of the documents produced by the United States or the Defendant may contain information that could be considered to be confidential information, proprietary information, "trade secret" information (within the meaning of 18 U.S.C. § 1839(3)) or grand jury material, including but not limited to information and material belonging to third parties;

STIPULATED INTERIM PROTECTIVE ORDER
CR 11-0488 RS

1 WHEREAS the United States and the Defendant deem it appropriate to provide for the
2 protection of such Confidential Material in a Stipulated Interim Protective Order, (a) with the
3 understanding that nothing herein constitutes any agreement or creates any presumption
4 regarding whether any designated Confidential Material is in fact eligible for protection from
5 disclosure, such as in fact constituting "trade secret" information within the meaning of 18
6 U.S.C. § 1839(3); (b) with the understanding that nothing herein shall be deemed to serve as a
7 basis or precedent regarding the appropriateness of a protective order with respect to materials
8 that may be subpoenaed from third parties in the future by the Defendant or the United States;
9 and (c) preserving the rights of the United States and the Defendant to challenge any designations
10 of Confidential Material at a later time;

11 WHEREAS the United States and the Defendant wish to begin the process of allowing
12 each other to become familiar with the Confidential Material, the United States and Defendant
13 have agreed to this Stipulated Interim Protective Order with the understanding that it may be
14 subsequently modified in such a way as the United States and the Defendant may agree, or in the
15 absence of such agreement, as the Court may order;

16 Accordingly,

17 IT IS HEREBY STIPULATED AND AGREED by and between the United States and the
18 defendant Homy Hong-Ming Hsu, and their respective counsel, that the following definitions and
19 procedures will govern the designation and handling of Confidential Material received by the
20 Defendant from the United States and by the United States from the Defendant, while reserving
21 for a future time the question of how such materials and information shall be handled during pre-
22 or post-trial hearings and at trial.

23 1. Definitions:

24 a. The "Parties" or "Party" shall refer to the United States and the Defendant,
25 and their counsel.

26 b. "Confidential Material" shall mean the following Discovery Material:
27 information that the Parties contend has been kept secret, is confidential or proprietary
28 information, is a trade secret within the meaning of 18 U.S.C. § 1839(3), or is grand jury

1 material, including but not limited to (a) transcripts of grand jury testimony, (b) immunity or
2 leniency agreements, (c) reports prepared by federal law enforcement agents and employees such
3 as Federal Bureau of Investigation Forms 302 and witness interview memoranda, and (d)
4 documents produced pursuant to, or voluntarily in lieu of, a grand jury subpoena;

5 c. "Discovery Material" shall mean all materials received by the Defendant
6 from the United States or received by the United States from the Defendant pursuant to their
7 respective discovery obligations in the above-captioned case.

8 2. Each Party shall designate in writing Discovery Material it produces, or has
9 produced, as Confidential Material to the extent that the Party believes in good faith that the
10 information or material is Confidential Material as defined in ¶ 1(b) above. Whenever possible,
11 the Parties shall indicate whether particular items of Discovery Material are being designated as
12 Confidential Material at the time that such Discovery Material is produced. Computer memory
13 storage materials such as diskettes, hard drives, or other memory media containing Discovery
14 Material deemed by the Parties to be Confidential Material shall be labeled on the outside of the
15 media as "CONFIDENTIAL." The Parties shall maintain unlabeled, or "clean," copies of any
16 Discovery Material that it has labeled "CONFIDENTIAL" under this Stipulated Interim
17 Protective Order for the future use by the Parties in subsequent proceedings.

18 3. Confidential Material produced by the United States and provided to Defendant
19 may be disclosed only to the undersigned individual Defendant, to the undersigned Defendant's
20 attorney, and to personnel working on this case under the direction of such attorney, including
21 but not limited to employees and other attorneys in such attorney's law office, interpreters,
22 translators, investigators, paralegals, and secretarial and clerical staff. This prohibition does not
23 extend to the Party's showing of Confidential Material to potential witnesses and their counsel,
24 provided that those witnesses do not retain the Confidential Material, unless the document was
25 obtained from that witness. In the event that the Parties wish to consult or retain an expert
26 regarding these Confidential Materials, the procedure for doing so is addressed in ¶ 8 of this
27 Stipulated Interim Protective Order. All such Confidential Material shall be used solely for the
28 purpose of conducting pretrial, trial and appellate proceedings in this case and for no other

1 purposes whatsoever, and shall not be used for the economic benefit of any Party or for the
2 benefit of any third party.

3 4. Before a Party may disclose Confidential Material that it has received as
4 Discovery Material to anyone other than an individual described herein in paragraphs 3 or 8,
5 counsel for the Party seeking to disclose must provide written notice to the other Party ("Notice
6 of Intent to Disclose") at least seven business days ("business days" as used herein being
7 exclusive of weekends and Federal holidays) in advance of disclosure in order to provide the
8 other Party with an opportunity to object. If an objection is made, the Party seeking to disclose
9 shall have five business days to respond. If no agreement is reached between the Parties, the
10 Party seeking to disclose may apply to the Court for appropriate relief, with copies of such
11 motion being served on counsel for the other Party. Any such application or supporting
12 document shall be filed under seal. The Party seeking to disclose may include as an attachment
13 to such a motion an explanation by any third party possessing a proprietary interest in the
14 confidential material articulating any concerns that that person may have with the disclosure of
15 Confidential Material. Once an objection has been made, no Confidential Material may be
16 disclosed unless and until the objection has been resolved or ruled upon by the Court.

17 5. Absent further order of this Court, the recipient of any Confidential Material
18 produced as Discovery Material shall not further disclose such Confidential Material to any
19 individual or entity, other than to an individual or entity described herein in paragraphs 3 or 8.
20 Should the Defendant or the United States receive a subpoena, document request, civil
21 investigative demand, or like request as part of a judicial or administrative proceeding, such Party
22 shall provide written notice within seven business days to the other Party. The Parties shall meet
23 and confer regarding an agreed-upon response to such request. If no agreement is reached, the
24 Parties may independently apply to the Court for appropriate relief. The recipient of any
25 Confidential Material that is provided under this Stipulated Interim Protective Order shall keep
26 such information in a manner reasonably intended to preserve and maintain the confidentiality of
27 the information and shall not disclose such information to any individuals except as authorized
28 by this Stipulated Interim Protective Order.

1 authorize disclosure of such Acknowledgement(s). Nothing in this paragraph relieves any Party
2 of the discovery obligations contained in the Federal Rule of Criminal Procedure, nor does any
3 Party waive any rights thereunder by entering into this Stipulation.

4 9. The Discovery Material that a Party receives shall not be used in any civil
5 litigation, unless such material was produced or received in such civil litigation. Furthermore,
6 except as provided herein, the Discovery Material received by Defendant shall not be provided to
7 anyone who is not a Party to this Stipulated Interim Protective Order, including but not limited to
8 any person who is or subsequently becomes a co-defendant of Homy Hong-Ming Hsu.

9 10. None of the individuals or entities that may have instituted civil actions for
10 damages for asserted aftermarket auto lights collusion is a Party to the above-captioned case.
11 Where this Stipulated Interim Protective Order requires the service of notice on an opposing
12 party, this requirement does not include the service of notice on such individuals or entities, or
13 any other third party.

14 11. At the conclusion of the above-captioned case (including but not limited to any
15 post-trial proceedings, appeal or habeas petitions), the Parties agree to either destroy all
16 Discovery Material or return the Discovery Material to the producing Party, except as otherwise
17 directed by the Court.

18 12. By signing and agreeing to this Stipulated Interim Protective Order, no party shall
19 be deemed to have conceded that any Discovery Material has been properly designated as
20 Confidential Material. Moreover, failure of a party to designate Discovery Material as
21 Confidential Material at the time of production shall not be deemed a waiver of the party's ability
22 to argue at a later time that the Discovery Material in fact is Confidential Material.

23 13. Nothing in this Stipulated Interim Protective Order shall preclude any Party from
24 applying to the Court for further relief or modification. The Parties' agreement to enter into this
25 Stipulated Interim Protective Order at this time is for the purpose of pretrial discovery and is not
26 a concession by any Party that a "confidential" designation or the terms of this stipulated order
27 would be appropriate should the case proceed beyond pretrial discovery.

28 14. Nothing in this Stipulated Interim Protective Order shall prevent disclosure

beyond the terms of this Stipulated Interim Protective Order if the Parties consent in writing to such disclosure, or if such disclosure is ordered by the Court.

15. Willful violation of this Stipulated Interim Protective Order may be punishable by contempt of court or any other sanction or combinations of sanctions that are legally available.

IT IS SO STIPULATED.

DATED:

8/18/11



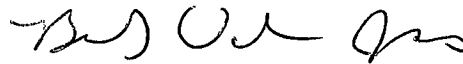
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IT IS SO STIPULATED.

DATED:

8/18/11

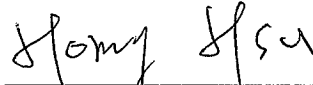


BECKY WALKER JAMES
Attorney for Defendant Homy Hong-Ming Hsu

IT IS SO STIPULATED.

DATED:

8/18/2011



HOMY HONG-MING HSU
Defendant

IT IS SO ORDERED.

DATED:

8/19/11



THE HONORABLE RICHARD SEEBORG
United States District Judge

**ACKNOWLEDGMENT OF STIPULATED INTERIM
PROTECTED ORDER IN:
UNITED STATES v. HOMY HONG-MING HSU**

The undersigned hereby acknowledges that he or she has received a copy of the Stipulated Interim Protective Order issued in United States v. Homy Hong-Ming Hsu, CR 11-0488 RS (N.D. CA), has read, understands, and agrees to the terms of the Stipulated Interim Protective Order, and hereby submits to the jurisdiction of the United States District Court for the Northern District of California for the purposes of enforcement of the terms of the Stipulated Interim Protective Order and the punishment of any violations thereof.

DATED:

Signature

Street Address

City, State, and Zip Code

Area Code and Telephone Number